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10/560,472	12/12/2005	Jean-Louis Desjoyaux	1759-213	3145
23405 7590 07/24/2008 HESLIN ROTHENBERG FARLEY & MESTI PC 5 COLUMBIA CIRCLE ALBANY, NY 12203				
EXAMINER				
FONSECA, JESSIE T				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/560,472

**Applicant(s)**

DESJOYAUX ET AL.

**Examiner**

JESSIE FONSECA

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10-14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-14, and 16-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 October 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/24/08 has been entered.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the reduction in thickness at regular or irregular intervals must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 5 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Independent claim 1 includes the limitation of the panel delimiting a strip formed from a plurality of ribs arranged in a honeycomb. Claim 5 includes a broader recitation of the limitation found in claim 1 as the ribs being arranged in honeycomb fashion are staggered. Note that canceled claim 9, which was dependent upon claim 5, previously included the limitation of the honeycomb strip

Claim 11 is objected to because of the following informalities:

Claim 11 appears to be a duplicate of claim 10.

Appropriate correction is required.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 103***

Claims 1-8, 10-14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laven (US 4,124,907) in view of Carling et al. (US 5,992,106), and in further view of Wilson (US 5,590,493).

With regards to claim 1 and 5: Laven discloses a panel (22) having a prefabricated structure having a quadrangular general shape with a peripheral squared framework delimiting vertical assembly flanges (46, 48) and upper and lower horizontal flanges (36, 42), wherein:

the upper horizontal flange (36) has a thickness comprising a profiled groove (34) capable of engaging and clamping of a protective sheet or liner covering an inner face of the panel; and

the upper horizontal flange (36) comprising a top portion and a bottom portion, the top portion and the bottom portion bounding the groove (34) and extending in a direction away from the outer face of the panel (22) about a same distance as the plurality of stiffening ribs (40, 44) extending away from the outer surface of the panel (22) (fig. 5). However, should applicant argue the top and bottom portion do not extend about the distance of the stiffening ribs, it would have been obvious matter of design choice to one of ordinary skill in the art at the time of the invention to extend the portions of the groove a desired distance in order to accommodate various liners. No new of

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unpredictable results would be expected from having a groove extending about the distance of the ribs.

Laven further discloses the panel is made of plastic (abstract), but is silent in regards to the plastic being a recycled plastic. It is the examiner's position, that plastic and recycled plastic are functionally equivalent, no new or unpredictable results would be expected from the use of recycled plastic. One of ordinary skill the art at the time of the invention would recognize that the use of recycled plastic includes such benefits as cost savings, being environmentally friendly, etc. As such, one of ordinary skill in the art would have good reason to pursue the known option within his or own technical grasp

Laven discloses everything previously mentioned including stiffening ribs (40, 44) overhanging the outer face of the panel, but fails to disclose the panel having a length between 1000 mm and 200mm, wherein the thickness of the ribs is approximately 7 to 8 mm with the stiffening ribs overhanging an outer face the panel, where the base of the ribs is approximately to 6 to 7 mm.

However, Willson discloses a panel (10) having a thickness between 1/8" (0.31 mm) and 1/2" (12.7 mm), which falls within the approximate range of 7 to 8 mm, with a plurality of stiffening ribs (30) overhanging an outer face of the panel (10) (fig. 4). Wilson further discloses the base of the ribs (30) being approximately the same thickness as the panel (fig. 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the panel of Laven to employ a panel thickness within the approximate range of 7 to 8 mm and rib thickness of 6 to 7 mm as Wilson teaches a

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panel thickness range encompassing the claimed panel range thickness, wherein the intermediate ribs are approximately the same thickness as the panel. The modification would allow for a panel having a desired level of strength and rigidity, which is capable maintaining its form under load.

Further, one of ordinary skill in the art at the time of the invention was made would recognize the physical characteristics of the ribs, including characteristics such as thickness and spacing, would affect the rigidity of the panel. Optimizing the thickness of the ribs through undue experimentation in order to provide the desired level of strength would have been obvious. No new or unpredictable results would be expected as one of ordinary skill in the art at the time of the invention has good reason to pursue the known option within his or own technical grasp.

Laven is silent with regards to the panel have a length between 1000 mm and 2000 mm approximately. However, it would have been an obvious matter of design choice to employ a length that is manageable for ease of transport, handling and installation. No new or unpredictable results would be expected as one of ordinary skill in the art at the time of the invention has good reason to pursue the known option within his or own technical grasp.

Willson discloses everything previously mentioned, but fails to disclose a horizontal upper edge of the outer face of the panel delimits a strip formed from a plurality of ribs arranged in a honeycomb.

However, Carling et al. discloses a outer face of a panel (10) having a plurality of ribs arranged in a staggered fashion in the form of honeycomb (fig. 2; col. 2, lines 26-29).

It would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the panel of Laven, in view of Wilson, to include ribs in a staggered fashion comprising honeycomb on the outer face of the panel as taught by Carling et al. for increased stability and integrity. As per the modification, the panel of Laven, previously modified by Wilson, would include honeycomb reinforcement ribs on the outer face bounded by the stiffening ribs, thus forming strips bounded by upper edge.

The panel being formed by compression injection moulding renders the claim a product by process claim.

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

With regards to claim 2: Laven further discloses the vertical flanges (46,48) have complementary arrangements (fig. 5), which is capable of coupling with adjacent panels in order to produce a closed structure of the pool.



Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 3: Laven further discloses the lower horizontal flange (42) having arrangements (fig. 5), which is capable of engaging with anchoring members for anchoring in a ground portion.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 4: Laven further wherein the ribs (40, 44) are formed vertically and horizontally on the outer face of the panel (22) (fig. 5).

With regards to claim 6: Laven disclose parallel vertical flanges (40), but fails to disclose in a thickness of the panel, at regular or irregular intervals and parallel to the vertical flanges, reductions in thickness capable of acting as hinges in order to modify a longitudinal profile of said panel as desired.

However, Wilson discloses in the thickness of the panel (10), at regular intervals and parallel to the vertical flanges, reductions in thickness (32) capable of acting as hinges in order to modify a longitudinal profile of said panel as desired (col. 1, lines 51-56 and col. 3, lines 31-33).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the panel of Laven to include reductions in thickness as regular intervals and parallel to the vertical flanges as taught by Wilson in order to provide a panel that will permit flexing for creating desired pool shape structure.

With regards to claim 7:Laven further discloses the outer face has, in an upper part, catching and positioning arrangements (108) (fig. 5).

The catching and positioning arrangements (108, holes) of Laven are capable of interacting with complementary arrangements of attached independent modifiable elements acting as gutters for pouring of concrete for forming a peripheral upper anchorage after coupling of various panels.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 8: Laven further discloses the outer face comprises a height and the outer face has, over all or part of the height, has catching and positioning arrangements (108) (fig. 5)

The catching and positioning arrangements (108, holes) of Laven are capable of interacting with complementary arrangements of at least one attached independent element acting as a vertical shaft, in communication with the anchorage elements, for pouring of concrete.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claims 10 & 11: Laven discloses a method for fabricating a swimming pool panel comprising:

discloses a panel (22) having a prefabricated structure having a quadrangular general shape with a peripheral squared framework delimiting vertical assembly flanges (46, 48) and upper and lower horizontal flanges (36, 42), the upper horizontal flange (36) has a thickness comprising a profiled groove (34) capable of engaging and clamping of a protective sheet or liner covering an inner face of the panel;

Laven further discloses the panel is formed of molded plastic (abstract; col. 3, lines 13-16), but is silent in regards to the plastic being a recycled plastic. It is the examiner's position, that plastic and recycled plastic are functionally equivalent, no new or unpredictable results would be expected from the use of recycled plastic. One of ordinary skill in the art at the time of the invention would recognize that the use of recycled plastic includes such benefits as cost savings, being environmentally friendly, etc. As such, one of ordinary skill in the art at the time of the invention would have good reason to pursue the known option within his or own technical grasp. With regards to limitation of the panel being formed by compression injection molding, it would have been obvious to one of ordinary skill in the art the time of the invention to form the panel of Laven by

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compression-injection molding in order to provide a structure will desired characteristics such as shape and thickness. Note applicant acknowledges that that compression-injection moulding is well known in the art (pg. 3, lines 10-16 of applicant's disclosure).

Laven further disclose a profiled groove (34) in the thickness of the upper horizontal flange (36), wherein the groove is capable of engaging and clamping a protective liner on the inner face of the structure.

Laven discloses everything previously mentioned including stiffening ribs (40, 44) overhanging the outer face of the panel, but fails to disclose the panel having a length between 1000 mm and 200mm, wherein the thickness of the ribs is approximately 7 to 8 mm with the stiffening ribs overhanging an outer face the panel, where the base of the ribs is approximately to 6 to 7 mm.

However, Willson discloses a panel (10) having a thickness between 1/8" (0.31 mm) and 1/2" (12.7 mm), which falls within the approximate range of 7 to 8 mm, with a plurality of stiffening ribs (30) overhanging an outer face of the panel (10) (fig. 4). Wilson further discloses the base of the ribs (30) being approximately the same thickness as the panel (fig. 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the panel of Laven to employ a panel thickness within the approximate range of 7 to 8 mm and rib thickness of 6 to 7 mm as Wilson teaches a panel thickness range encompassing the claimed panel range thickness, wherein the intermediate ribs are approximately the same thickness as the panel. The modification

would allow for a panel having a desired level of strength and rigidity, which is capable maintaining its form under load.

One of ordinary skill in the art at the time of the invention was made would recognize the physical characteristics of the ribs, including characteristics such as thickness and spacing, would affect the rigidity of the panel. Optimizing the thickness of the ribs through undue experimentation in order to provide the desired level of strength would have been obvious. No new or unpredictable results would be expected as one of ordinary skill in the art at the time of the invention has good reason to pursue the known option within his or own technical grasp.

Laven is silent with regards to the panel have a length between 1000 mm and 2000 mm approximately. It would have been an obvious matter of design choice to employ a length that is manageable for ease of transport, handling and installation. No new or unpredictable results would be expected as one of ordinary skill in the art at the time of the invention has good reason to pursue the known option within his or own technical grasp.

Willson discloses everything previously mentioned, but fails to disclose a horizontal upper edge of the outer face of the panel delimits a strip formed from a plurality of ribs arranged in a honeycomb.

However, Carling et al. discloses a outer face of a panel (10) having a plurality of ribs arranged in a staggered fashion in the form of honeycomb (fig. 2; col. 2, lines 26-29).

It would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the panel of Laven, in view of Wilson, to include ribs in a staggered fashion comprising honeycomb on the outer face of the panel as taught by Carling et al. for increased stability and integrity. As the per the modification, the panel of Laven, previously modified by Wilson, would include honeycomb reinforcement ribs on the outer face bounded by the stiffening ribs, thus forming strips bounded by the upper edge.

With regards to claim 12: Laven further discloses the vertical flanges (46,48) have complementary arrangements (fig. 5), which is capable of coupling with adjacent panels in order to produce a closed structure of the pool.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 13: Laven further discloses the lower horizontal flange (42) having arrangements (fig. 5), which is capable of engaging with anchoring members for anchoring in a ground portion.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 14: Laven further wherein the ribs (40, 44) are formed vertically and horizontally on the outer face of the panel (22) (fig. 5).

With regards to claim 16: Laven disclose parallel vertical flanges (40), but fails to disclose in a thickness of the panel, at regular or irregular intervals and parallel to the vertical flanges, reductions in thickness capable of acting as hinges in order to modify a longitudinal profile of said panel as desired.

However, Wilson discloses in the thickness of the panel (10), at regular intervals and parallel to the vertical flanges, reductions in thickness (32) capable of acting as hinges in order to modify a longitudinal profile of said panel as desired (col. 1, lines 51-56 and col. 3, lines 31-33).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the panel of Laven to include reductions in thickness as regular intervals and parallel to the vertical flanges as taught by Wilson in order to provide a panel that will permit flexing for creating desired pool shape structure.

With regards to claim 17: Laven further discloses the outer face has, in an upper part, catching and positioning arrangements (108) (fig. 5).

The catching and positioning arrangements (108, holes) of Laven are capable of interacting with complementary arrangements of attached independent modifiable elements acting as gutters for pouring of concrete for forming a peripheral upper anchorage after coupling of various panels.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to

patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 18: Laven further discloses the outer face comprises a height and the outer face has, over all or part of the height, has catching and positioning arrangements (108) (fig. 5)

The catching and positioning arrangements (108, holes) of Laven are capable of interacting with complementary arrangements of at least one attached independent element acting as a vertical shaft, in communication with the anchorage elements, for pouring of concrete.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

### ***Response to Arguments***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments that claim 11 is a product by process claim and therefore is not a duplicate of claim 10, applicant's arguments are found not persuasive. As recited, claim 11 appears to be directed a method. If applicant's intention is to claim a panel, Examiner suggests removing the limitations regarding a



method so as to make it abundantly clear. Note the preamble of claims dependent upon claim 11 indicate that independent claim is a method.

However, applicant argues that Carling et al. discloses a tile for floor assemblies, which is totally unrelated to utilizing honeycomb reinforcement for a pool. In response to applicant's argument that Carling et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Carling et al. generically teaches a panel having honeycomb ribs for support (col. 2, lines 26-30). One of ordinary skill in the art at the time of the invention who was concerned with the support of the panel would have looked to the teaching Carling et al.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kim discloses panels having rib strips formed along the perimeter (US 6,155,013).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSIE FONSECA whose telephone number is (571)272-7195. The examiner can normally be reached on M-F 8:30am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Canfield can be reached on (571)272-6840. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. F./

Examiner, Art Unit 3633

/Robert J Canfield/

Supervisory Patent Examiner, Art Unit 3635